

**ENVIRONMENTAL MANAGEMENT COMMISSION
WATER QUALITY COMMITTEE MEETING SUMMARY**

January 8, 2014

Archdale Building-Ground Floor Hearing Room

BRIEF

At the January 8, 2014 meeting of the Environmental Management Commission (EMC) Water Quality Committee (WQC), the WQC:

- approved the November 13, 2013 Water Quality Committee meeting summary.
- approved to proceed to the EMC with Temporary Gravel Rule changes to 15NCAC 02H .1002.
- approved to proceed to the EMC with initial determinations for Rules 15A NCAC 02B, 02H, 02T, and 02U in accordance with HB74 and G.S. 150B.
- approved requests for Major Variances from the Neuse Riparian Area Protection Rules for a commercial property at 5201 Trinity Rd in Raleigh and a daycare facility at SW Cary Parkway/Old Apex Road in Cary.
- approved to proceed with request to delegate the Neuse Riparian Buffer Program to Johnston County to the EMC.
- approved to delegate authority to the DWR Director to approve any subsequent program amendments that previously delegated local governments in the Neuse and Tar-Pamlico Basins may propose.
- approved DWR staff's request regarding Commission approval of NCDOT's Joint Stormwater Program as meeting the minimum requirements established in Item (9) of 15A NCAC 02B .0281.
- approved to delegate authority to the DWR Director to approve subsequent program amendments that NCDOT may propose in the future.
- heard an update on Annual Progress Reports for the Tar-Pamlico, Neuse, and Falls Lake Agriculture Rules.

WQC Members in Attendance:

Mr. Steve Tedder (Chairman)
Mr. David Anderson
Mr. William Puette
Dr. Albert Rubin
Mr. Benne Hutson
Mr. Kevin Martin

Others Present:

Mr. Tom Reeder, Division of Water Resources (DWR) Director
Ms. Mary Lucasse, Attorney General Office
Mr. Dan Dawson, EMC
Mr. Tommy Craven, EMC

The Water Quality Committee member Mr. Kevin Martin recused himself from making a decision on item 3 on the January 8, 2013 WQC agenda.

1. Request Approval to Proceed to Publication for Public Comment and Hearing on Changes to Rule 15A NCAC 02H .1002 - (Action Item) (Tracy Davis)

Description

During the recent legislative session, N.C.G.S. § 143-214.7 was amended to exclude gravel from the definition of “built-upon area.” The legislation, however, did not define the term “gravel.” The regulated community, in dealings with the Division of Energy, Mineral, and Land Resources (DEMLR), has questioned how to interpret the imprecise use of the term “gravel” in the amended statute. For these reasons, the EMC is pursuing temporary rulemaking to define the term used in the amended statute in accordance with industry standards, to prevent adverse environmental impacts, and to direct the regulated community to the established guidelines set forth in the DEMLR’s best management practices for stormwater control. Mr. Tracy Davis, Director of DEMLR provided the WQC an overview of the impacts of the recent statutory change to exclude gravel from the definition of “built-upon area”, discussed DEMLR’s draft language for the temporary rule which would define “gravel”, and requested the WQC’s approval to move this matter to the full Commission for review and approval to proceed with public comment and hearing on the changes to this rule.

Discussion

Ms. Mary Lucasse with the Attorney General Office provided the WQC an outline on temporary rulemaking process to clarify DEMLR’s request. The process will provide the time to develop a permanent rule during the temporary rule making period. Mr. Hutson gave a synopsis on the concerns (environmental and others) he heard from the state legislature and regulated community on this matter. Mr. Martin mentioned that the proposed size range of the gravel (2.00 millimeters up to 4.74 millimeters) was small. The WQC asked for staff to reconsider other size options for the proposed gravel temporary rule.

Motion

Mr. Martin motioned that the WQC move this matter to the full Commission with the understanding that more information on the proper size will be provided by staff for reconsideration by the Commission as far as the definition on gravel. Mr. Rubin seconded the motion, and the WQC unanimously approved of the motion.

2. Request Approval to Proceed with Rules Review of Rules 15A NCAC 02B, 02H, 02T, and 02U in accordance with HB74 and G.S. 150B – (Action Item) (Jeff Manning)

Description

The Division of Water Resources requested WQC’s approval to proceed to the EMC with the review of the subject rules. The rules review follows the procedure mandated by HB74. The review covers 375 rules in the surface water quality programs: 15A NCAC 02B (116 rules), 02H (119 rules), 02T (108 rules), and 02U (32 rules). Staff recommended the initial determination to be “necessary with substantive public interest”. If approved by the EMC in March, the rules will then move to the public comment phase of the HB74 review.

Discussion

Mr. Anderson asked staff why the 375 water quality program rules were chosen. Staff replied that HB74 mandates that subchapter 2B rules (surface water quality standards and wetland rules) be reviewed and they are related to certain rules in subchapters 2H, 2T, and 2U. A WQC member asked what types of comments are anticipated from this review. Staff said that for step one of the process, it is expected to receive questions on the categorization of the rules.

Motion

Dr. Rubin motioned the initial determinations recommended by staff. Mr. Hutson seconded the motion and the WQC unanimously approved the motion.

3. Request for a Major Variance from the Neuse Riparian Area Protection Rules by Mr. Tummalpally for Commercial Property at 5201 Trinity Rd in Raleigh, NC – (Action Item) (Jennifer Burdette)

Description

A request has been received for the WQC to grant a Major Variance from the Neuse River Riparian Area Protection Rules (15A NCAC 2B 0.233) to Mr. Harshavardhan Tummalpally for a commercial property at 5201 Trinity Road in Raleigh, NC. Due to the presence of an unnamed tributary to Richlands Creek bisecting the property, the proposed 4-story building and attendant parking and stormwater management facilities will need to encroach into Zones 1 and 2 of the riparian buffer. The applicant proposes mitigation and installation of a sand filter to offset the proposed buffer impacts. Although DWR recognizes that the applicant does not comply with the evaluation criterion 15A NCAC 02B .0233(9)(a)(i)(E), it recommends approval of this request with the following conditions: 1) the applicant shall purchase 37,283 buffer mitigation credits from the mitigation company indicated in their variance application; 2) the applicant shall develop a stormwater management plan consisting of a sand filter and level spreader, obtain approval from the City of Raleigh and provide DWR a copy of the approved plan and approval letter from the City of Raleigh; and 3) the applicant must provide a diffuse flow plan consisting of a level spreader for off-site stormwater for review and approval by DWR.

Discussion

Dr. Rubin asked who would be responsible for maintaining the stormwater infrastructure that would be developed on the property if the variance request is approved. Staff said that the property owner will be responsible. Ms. Lucasse commented that the approval should allow (buffer) mitigation to be purchased from Restoration Systems or another approved mitigation bank. A WQC member asked how the number of mitigation units on the property was determined.

Motion

Dr. Rubin made a motion to approve staff's request with conditions and the seconded by another WQC member. The WQC unanimously approved the major variance request.

4. Request for a Major Variance from the Neuse Riparian Area Protection Rules by LBJ/Cary Associates, LLC for a daycare facility at SW Cary Parkway/Old Apex Road in Cary, NC – (Action Item) (Karen Higgins)

Description

A request has been received for the WQC to grant a Major Variance from the Neuse River Riparian Area Protection Rules (15A NCAC 02B .0233) to LBJ / Cary Associates, LLC for a daycare facility at the intersection of SW Cary Parkway and Old Apex Road in Cary, NC. In March 2013, the WQC postponed a final decision pending further discussion among the applicant, DWR and the Town of Cary regarding the stormwater management plan and revision of the Findings of Fact. The riparian buffer impacts include 8,047 square feet of Zone 1 and 7,140 square feet of Zone 2. The applicant is proposing to purchase 34,851 buffer mitigation credits and to treat the stormwater as approved through the Town of Cary. Although DWR recognizes that the applicant does not comply with the evaluation criteria 15A NCAC 02B .0233(9) (a) (i) (E), it recommends approval of this request with the following conditions: 1) applicant will provide mitigation for proposed buffer impacts by purchasing 34, 851 buffer credits, and 2) provide one copy of the approved stormwater management plan, including plan details with proof of the Town of Cary's approval.

Discussion

Dr. Rubin asked who would be responsible for maintaining the stormwater infrastructure that would be developed on the property if the variance request is approved. Staff said that the landowner would be responsible for maintenance for stormwater BMPs.

Motion

Mr. Martin made a motion to approve the major variance request with the conditions recommended by staff and to remove the name of the mitigation company that the mitigation would be paid to. Dr. Rubin seconded the motion and the WQC unanimously approved the motion.

5. Request Approval of Delegation of the Neuse Buffer Program to Johnston County and Delegation of Further Approval Authority for Previously Delegated Local Governments in the Neuse and Tar-Pamlico Basins to the Director - (Action Item) (Jennifer Burdette)

Description

A request has been received for the WQC and EMC to grant delegation of the Neuse Buffer Rules (15A NCAC 02B .0233 and .0242) to Johnston County. DWR staff requested permission to proceed to the January EMC meeting with a recommendation for approval of Johnston County's delegation request. Staff also requested permission for the Director to approve any subsequent program amendments that previously delegated local governments in the Neuse and Tar-Pamlico Basins may propose. If the Director receives approval, he would provide notice of the request to the Water Quality Committee and would forward unique future programs revisions of concern to the Water Quality Committee for review.

Discussion

Mr. Anderson asked what happens when an individual that is certified to manage the Neuse River Riparian Buffer Protection program in a delegated area moves from there. The delegated local government will be required to have a member on staff that is certified. Mr. Hutson noted that the state legislature enacted a law that prohibits local governments from having more stringent requirements than are required by state law unless adopted unanimously by the local government. Staff noted that Johnston County did adopt their ordinance unanimously. Mr. Hutson directed staff to get this fact into the record

before the full Commission takes action to avoid legal issue with the adoption of the ordinance. For the record, Mr. Martin commented that 1) when the EMC adopts a local riparian buffer protection ordinance it is not an endorsement of being more restrictive it is just saying that the local government meets the minimum state rule, and 2) either the DWR or Johnston County should notify the electric utilities and contractors in the area.

Motion

Mr. Martin made a motion to approve the request to delegate the Neuse Buffer Program to Johnston County and move it to the full Commission with the request (he) stated regarding notification to the utility and other contractors that would be affected by the rule that is more restrictive than the state rule and clarification that the Commission is not endorsing or condemning anything that is more restrictive. Dr. Rubin seconded the motion, and the WQC unanimously approved the motion.

Mr. Martin moved that 1) the WQC approve staff's request and that is only for municipalities that have been delegated after first coming to the EMC and it's for changes to that already delegated program and 2) the WQC be copied with any delegation request but the Director doesn't have to wait for any response to act. Mr. Puette seconded the motion, and the WQC unanimously approved the motion.

6. Request for Approval of NCDOT's Falls Lake New & Existing Development Stormwater Management Program and Delegation of Further Approval Authority to the DWR Director (Action Item) (John Huisman)

Description

The Falls Lake State and Federal Entities Stormwater Rule, 15A NCAC 2B .0281 requires NCDOT to prepare, adopt and implement a joint stormwater program to achieve nutrient reductions from stormwater runoff from new and existing development in the Falls Lake Watershed. The rule establishes implementation requirements and timelines specific to NCDOT. Requirements for non-NCDOT state and federal entities also subject to this rule follow a different implementation timeline that is similar to those established for local governments. The NCDOT submitted a draft program for DWR staff review in July 2013 and has made subsequent revisions based on staff comments. Staff requested that the Commission approve NCDOT's Joint Stormwater Program as meeting the minimum requirements established in Item (9) of the rule. Staff also requested delegation of authority to the Director to approve any subsequent program amendments that the NCDOT may propose in the future. If the Director receives approval, he will forward unique future program revisions of concern to the Environmental Management Commission for review.

Discussion

There was no discussion on either request from staff.

Motion

A motion was made to approve staff's request regarding Commission approval of NCDOT's Joint Stormwater Program as meeting the minimum requirements established in Item (9) of 15A NCAC 02B .0281. Dr. Rubin seconded the motion, and the WQC unanimously approved the motion. Mr. Martin made a motion to approve staff's request regarding delegation of authority to the Director to approve subsequent program amendments that NCDOT may propose in the future. The motion was seconded by a WQC member, and unanimously approved by the WQC.

7. Annual Progress Reports on the Tar-Pamlico, Neuse, and Falls Lake Agriculture Rules - (Information Item) (John Huisman)

Description

The Tar-Pamlico, Neuse, and Falls Agriculture Rules (15A NCAC 2B .0238, .0256, and .0280, respectively) require their respective Basin and Watershed Oversight Committees to report to the Division and Commission on their annual implementation progress. For crop year 2012, the Oversight Committees approved reports from the 17 Local Advisory Committees (LACs) in the Neuse basin, the 14 LACs in the Tar-Pamlico basin, and 6 LACs in the Falls Lake watershed. The reports showed cumulative nitrogen loss reductions of 45%, 46%, and 31% from baseline through 2012 from agriculture in the respective watersheds. Relative to reductions reported last year, this equates to a 3% increase in reduction in the Tar-Pamlico basin with reductions in the Neuse and Falls watershed remaining unchanged. Reductions in nitrogen loss have been achieved through decreases in cropland production, reduced nitrogen application rates, crop shifts, and implementation of best management practices. The Tar-Pamlico and Falls agriculture rules also have an added phosphorus requirement and qualitative indicators for crop year 2012 demonstrate that there is no increased risk in phosphorus loss in either watershed.

Discussion

There was some discussion on possible shortfall in funding needed for technicians to generate the information to develop progress reports.

Motion

Not applicable

III. Closing Comments

Chairman Tedder

This summary was prepared by Adriene Weaver and reviewed and approved by applicable members of DEMLR and DWR Water Quality Program staffs